IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

ORDER

S.B. CRIMINAL REVISION PETITION NO. 363/2003

HARI SINGH Vs. THE STATE OF RAJASTHAN & ORS.

DATE: 08.02.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. S.K. Gupta for the complainant-petitioner.
Mr. Ashwani Kumar Sharma, PP for the State.
Mr. Shailendra Singh for
Mr. Anoop Dhand for the accused-respondents.

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The instant criminal revision petition under Section 397 r/w Section 401 Cr.P.C. is preferred by the petitioner against the order dated 27.02.2003 passed by the Additional Sessions Judge No.2, Bayana, District Bharatpur in Criminal Revision No. 17/2003, by which the Revisional Court while allowing the criminal revision, set-aside the order of taking cognizance and issuing non-bailable warrants dated 24.01.2003 passed by the Judicial Magistrate First Class, Wair, District Bharatpur in Criminal Case No. 79/2003.

The trial Court vide its order dated 24.01.2003, has taken cognizance against the accused-respondents Nos. 2 to 6 for the offence under Sections 148, 323, 323/149, 341, 341/149, 326, 326/149, 447 and 447/149 IPC, but the Revisional Court vide its impugned order dated 27.02.2003 quashed and set-aside the order

dated 24.01.2003 passed by the Judicial Magistrate, Weir, District Bharatpur on the ground that the trial Court has not given the opportunity to adduce the evidence under Section 200 and 202 Cr.P.C.

Sections 200 and 202 of the Code of Criminal Procedure read as under:-

> **200. Examination of complainant.-** A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:
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> Provided that when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-
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> (a) if a pubic servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or
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> (b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192:
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> Provided further that if the Magistrate makes over the case to another Magistrate under Section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them
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> **202. Postponement of issue of process.-** (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, postpone the issue of

process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceedings:

Provided that no such direction for investigation shall be made-

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under Section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant."

As per Section 200 Cr.P.C., a Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses

present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate.

Here in the instant case, it is not a case of private complaint and the police after investigation has filed the charge-sheet only against Bharti and Timan Singh for the offence under Sections 341 and 323 IPC and the petitioner-complainant also filed a protest petition against the accused-respondents Timan Singh and Bharti along with other accused-respondents namely Darbari, Chothi and Bablu allegiing therein that the offence under Sections 147, 148, 148/149, 323, 341, 326, 452 and 427 IPC is also made out against the accused. The trial Court after going through the protest petition filed by the complainant-petitioner, taken cognizance against the accused-respondents for the offences as aforementioned.

Thus, as per the settled preposition of law and as per the provisions of Sections 200 and 202 Cr.P.C., it is not essential in the instant case to give liberty to record the statements and the statements recorded by the police under Section 202 Cr.P.C. are enough for framing charge if the trial Court is satisfy that prima-facie case is made out against the accused for the offences committed by them

Hence, the Revisional Court has seriously erred in not considering the legal preposition properly and passed the remand order dated 27.02.2003, by which the matter has been remanded back to the trial Court after quashing and setting aside the order of the trial Court dated 24.01.2003.

In view of the aforesaid observations, the impugned order dated 27.02.2003 passed by the Revisional Court i.e. the Additional Sessions Judge No.2, Bayana in Criminal Revision No. 17/2003 is herewith quashed and set-aside.

The revision petition stands allowed.

Record be sent back forthwith.

(K.S. RATHORE), J.

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